

**To:** LEVIN, NANCY[Levin.Nancy@epa.gov]; Wamsley, Jerry[Wamsley.Jerry@epa.gov]  
**Cc:** Mays, Rory[Mays.Rory@epa.gov]  
**From:** McKaughan, Colleen  
**Sent:** Thur 11/20/2014 10:37:04 PM  
**Subject:** RE: \*\*\*Updated Rulemaking for review

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>>>>>>>

Let me call Eric and make that suggestion. Can I share your email with him too?

I cancelled my CDO for tomorrow so I can join the call.

**From:** LEVIN, NANCY  
**Sent:** Thursday, November 20, 2014 3:14 PM  
**To:** McKaughan, Colleen; Wamsley, Jerry  
**Cc:** Mays, Rory  
**Subject:** RE: \*\*\*Updated Rulemaking for review

I explained the concern to Lisa. But not sure what she'll do.

The compliance dates for implementing BMPs were in the April 25 version they sent us to review. But they got deleted in November version.

I think they could remedy this by adding back A and B (deleted from 4-25-2014 version) and change the date to January 1, 2016.

**11-13-2014 version (4-25-2014 version)**

**Final Crop Rule 610.03** – *[This is the rule that lists the BMPs that the farmer “shall implement”]*

~~A—A commercial farmer shall comply with this Section by January 1, 2015.~~

~~B—A commercial farmer who begins a regulated agricultural activity after January 1, 2015, shall comply with this Section within three months of beginning the regulated agricultural activity.~~

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F. From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity ~~Beginning January 1, 2015, or within 90 days after the start of a new-regulated agricultural activity, whichever is later~~ shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section.

11-4-2014 (latest) version – which we received Nov 11th:

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**Nancy Levin** Air Rules Office

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US EPA Region 9, 75 Hawthorne St (AIR-4) San Francisco, CA 94105

**From:** McKaughan, Colleen  
**Sent:** Thursday, November 20, 2014 1:21 PM  
**To:** Wamsley, Jerry; LEVIN, NANCY  
**Cc:** Mays, Rory  
**Subject:** RE: \*\*\*Updated Rulemaking for review

Nancy – Any word from Lisa on this?

**From:** Wamsley, Jerry  
**Sent:** Thursday, November 20, 2014 2:14 PM  
**To:** McKaughan, Colleen; LEVIN, NANCY  
**Cc:** Mays, Rory  
**Subject:** RE: \*\*\*Updated Rulemaking for review

Hello Nancy and Colleen,

I think the best way to ensure that a BMP/control measure is implemented by a date certain by the relevant ag operator is to specify that date in the Ag BMP rule. To make a plan based date enforceable would be so idiosyncratic and possibly difficult that it hardly justifies the effort, i.e., a lot of ORC discussion of examples with a nonetheless questionable result. Why remake the wheel?

Re: Nancy's (1). I think your point is well taken, Farmer John and Joan do not have an incentive to anything ahead of the specified date. The statutory deadline is a "no later than" backstop deadline. As a practical point of having good data (or at least better data) in 2016 and later, earlier implementation is better.

Re: Nancy's question (2). Your question confirms the point of any potential dispute/adverse comment on the permit completion/BMP implementation issue. Any description of what may happen between BMP/permit completion date and BMP/implementation date is hypothetical. We can construe that for the better, while someone else may construe that for the worse. My conjecture is that the earlier 7/2/2015 permit completion date may allow us and ADEQ to make a better argument that things are happening in advance of 7/2/2016. Nancy makes, however, a good practical justification for a 12/31/2015 permit completion date, depending on the operation in question. A beef feedlot operation applying dust suppressant/water could not make the same seasonality crop selection argument that a planting and tilling operation could. The ag operation/source mix in Pinal County might point to the arguably better permit completion date or BMP implementation date?

Jerry

**From:** McKaughan, Colleen  
**Sent:** Thursday, November 20, 2014 12:35 PM  
**To:** LEVIN, NANCY; Wamsley, Jerry  
**Cc:** Mays, Rory  
**Subject:** RE: \*\*\*Updated Rulemaking for review

Does the implementation date get specified in the Ag BMP rule or the plan itself?

**From:** LEVIN, NANCY  
**Sent:** Thursday, November 20, 2014 1:27 PM  
**To:** Wamsley, Jerry  
**Cc:** McKaughan, Colleen; Mays, Rory  
**Subject:** RE: \*\*\*Updated Rulemaking for review

Jerry – Thanks - very helpful to have a date I can give them for implementation. One comment and one question:

1) We need to understand that even if ADEQ sets an implementation date of July 2, 2016, not all BMPs can be implemented on the ground by then. E.g., if harvest doesn't take place until October, they can't do "harvest" BMP until October.

2) I'm not sure why we'd need them to choose BMPs a year in advance. They may not even know what they are planting a year in advance. Why isn't Dec 31, 2015 OK for BMP Form completion, and July 1 for implementation?

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**From:** Wamsley, Jerry  
**Sent:** Thursday, November 20, 2014 12:02 PM  
**To:** LEVIN, NANCY  
**Cc:** McKaughan, Colleen; Mays, Rory  
**Subject:** RE: \*\*\*Updated Rulemaking for review

Hello Nancy,

Just my \$0.02, not to add a few more pennies to your burden... in order of least staff report hand-waving to more...

Best solution is a specified BMP implementation date prior to July 2, 2016 (section 189(a)(1)(C) deadline for RACM implementation). It is also helpful to have a permit completion deadline

complementary to this statutory deadline, perhaps a year prior to accommodate all seasonal operations and related control measures, 7/2/2015.

The most staff report hand-waving is likely to occur if we have just the permit completion deadline with no hard deadline for RACM implementation. This requires us (and ADEQ) to argue that the statutory RACM deadline was met in the aggregate, at best, while some individual operation may have lagged behind. This construction also allows anyone else to dispute our (and ADEQ's) argument with a different set of facts.

Thanks,

Jerry

**From:** LEVIN, NANCY

**Sent:** Thursday, November 20, 2014 11:11 AM

**To:** Lisa M. Tomczak

**Cc:** McKaughan, Colleen; Wamsley, Jerry; Mays, Rory

**Subject:** RE: \*\*\*Updated Rulemaking for review

Hi Lisa- I don't see where it includes 60 or 90 days in the Nov 13 version, as some of the language has changed. The Nov 13 version has dates for completing the forms and maintaining records, but I don't see a certain date (or a maximum # days after approval) by which the farmers/operators must implement BMPs. As an example, here's what I see on compliance and dates for the Animal Rule/Pinal R18-2-11.03 (starts page 30)

**R18-2-611.03 Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area**

Page 30: **A.** A commercial animal operator within the Pinal County PM Nonattainment Area shall implement at least one best management practice from each category to reduce PM emissions.

Page 33: **H.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31.

Page 33: **J.** Beginning January 1, 2015, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices...

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**From:** Lisa M. Tomczak [<mailto:Tomczak.Lisa@azdeq.gov>]

**Sent:** Wednesday, November 19, 2014 11:40 AM

**To:** LEVIN, NANCY

**Subject:** RE: \*\*\*Updated Rulemaking for review

Nancy,

Are you referring to a date by which new farmers must comply with the program? In our rule, I believe that it is within 60 or 90 days of commencing new operations.

Thanks,

Lisa

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Lisa Tomczak

Planning Unit Supervisor

Air Quality Division

(602) 771-4450

**From:** LEVIN, NANCY [<mailto:Levin.Nancy@epa.gov>]

**Sent:** Monday, November 17, 2014 5:27 PM

**To:** Lisa M. Tomczak

**Cc:** McKaughan, Colleen

**Subject:** FW: \*\*\*Updated Rulemaking for review

Hi Lisa,

Since Danielle is on vacation, I wanted to check with you about whether the AgBMP rules include a date by which farmers must implement the BMPs they select. The current versions state that the farmer/animal operator/irrigation district must complete a BMP General Permit Record Form, but did not see a date for implementation of the BMPs. I may have just missed it, but if not, that is important to include.

Thanks.

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**From:** Danielle M. Hazeltine [<mailto:Hazeltine.Danielle@azdeq.gov>]

**Sent:** Thursday, November 13, 2014 4:21 PM

**To:** McKaughan, Colleen; LEVIN, NANCY

**Subject:** FW: \*\*\*Updated Rulemaking for review

Colleen and Nancy,

FYI - New draft of the Ag Rule that I just sent for review.

Thanks,

Danielle

**From:** Danielle M. Hazeltine

**Sent:** Thursday, November 13, 2014 4:32 PM

**To:** 'Ana Troncoso'; 'Brett Cameron'; 'Dan Thelander'; 'Earl Petznick Jr.'; Eric C. Massey; 'Glen Curtis'; 'Glenn Hickman ([ghickman@hickmanseggs.com](mailto:ghickman@hickmanseggs.com))'; Henry Darwin; 'Jeff Silvertooth'; 'Jim Walworth'; 'Keisha Tatem'; 'Kevin Rogers ([kevinrogers@azfb.org](mailto:kevinrogers@azfb.org))'; 'Marguerite Tan'; 'Shane Burgess ([sburgess@cals.arizona.edu](mailto:sburgess@cals.arizona.edu))'; 'Steven Crofts'; 'Sylvia Ramirez'; 'Tom Thompson ([Tom@stotzdairy.com](mailto:Tom@stotzdairy.com))'; 'Wade Accomazzo'; 'Will Rousseau'

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**Subject:** \*\*\*Updated Rulemaking for review

All,

I have made the requested small changes to the document. Please review.

There are also two possible substantial changes made to the document since the meeting that need to be reviewed:

- 1) P.16 Definition of "Unpaved roads or feed lanes"
- 2) P.30, R18-2-611.03(B) regarding the high risk BMP language for dairy operations.

All changes have been highlighted and some have comments to explain the changes (if there is no comment, it was a small change).

I will also be sending a series of emails with all of the forms for Pinal, Maricopa, and Moderate areas for review.

I am leaving today, so please do not reply to me regarding any questions, comments or changes that you'd like to make to the rulemaking document; please contact my supervisor, Lisa

Tomeczak at [Tomeczak.Lisa@azdeq.gov](mailto:Tomeczak.Lisa@azdeq.gov) or (602)771-4450.

Thank you,

**Danielle M. Hazeltine, Esq.**

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